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No. 87-1437

In The

Supreme Court of the United States

October Term, 1987

MELVIN R. BLANTON and
MARK D. FRALEY,

Petitioners,

vs.

CITY OF NORTH LAS VEGAS, NEVADA,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEVADA

BRIEF FOR THE RESPONDENT

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QUESTION PRESENTED

Whether this court should affirm the Nevada Supreme Court decision denying jury trials to persons charged with misdemeanor Driving Under the Influence (DUI) offenses in the municipal courts of the State of Nevada for lack of a Constitutional right to a trial by jury in view of the long-standing threshold between "petty" and "serious" offenses where the maximum authorized penalty is six months in jail?

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STATEMENT OF THE CASE

Respondent makes the following statement deemed necessary to correct an omission and an inaccuracy in the Petitioners' Statement of the Case.

The result of the laboratory analysis on Petitioner Blanton's blood sample drawn at the time of his arrest was 0.17 per cent by weight of blood alcohol.

Nevada Revised Statute 266.550, cited in Brief for Petitioners, page 4, does not apply to Nevada cities such as Respondent which are incorporated by special charter by the Nevada Legislature. *See* the opinion below, Appendix to Petition for Writ of Certiorari, Tab "A", pages 12-16; also see NRS 266.005 set out verbatim on page 14 thereof.

SUMMARY OF ARGUMENT

This Court should affirm the decision of the Supreme Court of Nevada. The Nevada Supreme Court decision denying jury trials for misdemeanor DUI offenses in Nevada where the maximum authorized penalty is six months in jail and a $1000 fine is in accord with pronouncements from this Court during the past twenty years defining a petty offense as one subject to no more than a six month jail sentence.

The argument that certain minimum mandatory punishment provisions, together with various collateral consequences, elevate an otherwise petty offense into a serious offense mandating a jury trial right is without merit. Minimum mandatory punishment is not relevant

to the test enunciated by this Court as the "maximum authorized penalty" for an offense. Although a "floor" of punishment has been established for DUI in Nevada, the "ceiling" remains at six months in jail and/or a $1,000 fine. Moreover, collateral consequences likewise do not affect the standard applied to the jury trial question; the threshold remains at six months in jail.

Petitioners attempt to revive a half-century old test, the "nature of the offense", to determine when a jury trial is mandated by the U.S. Constitution, citing two decisions of this Court from 1930 and 1937. This standard has been abandoned, however, as its absence from recent opinions of this Court would indicate. Petitioners also claim that a majority of states permit jury trials in DUI cases and thereby Nevada is compelled under the Constitution to comply with this "national standard" which regards it as a serious offense dictating a jury trial right.

A decision rendered last year by the Court, and cited this spring by the Fifth Circuit Court of Appeals, *en banc*, held that although an overwhelming majority of states provide a criminal procedural right, other states are not required by the Constitution to do likewise in areas of law left to the states to regulate, such as the task of defining criminal laws. An appeal was rejected last year by this Court where it was requested to review the identical issue presented by Petitioners for want of a substantial federal question. No new arguments or significant authorities arising since that decision have been cited by Petitioners.

The Ninth Circuit Court of Appeals has rendered decisions which on their face appear to conflict with the

Nevada Supreme Court decision in this case. However, the Fifth Circuit *en banc* opinion referred to above, explains, *inter alia*, why those Ninth Circuit decisions are an anomaly and contradict firmly established principles enunciated by this Court regarding when the right to a jury trial attaches.

ARGUMENT

A basic principle of law deeply rooted in the historical practice of the Colonies and the original thirteen states declares that, under the Constitution, no person is entitled to a trial by jury for a petty offense. *Baldwin v. New York*, 399 U.S. 66 (1969). This Court has refined, through a series of decisions emanating with *Duncan v. Louisiana*, 391 U.S. 145 (1968), a clear-cut definition of "petty offense": an offense which is subject to a maximum term of incarceration of six months or less. *Baldwin, supra; Frank v. United States*, 395 U.S. 147 (1969); *Codispoti v. Pennsylvania*, 418 U.S. 506 (1974).

I. MISDEMEANOR DUI VIOLATIONS IN NEVADA ARE PETTY OFFENSES UNDER FEDERAL CONSTITUTIONAL LAW AND PETITIONERS ARE NOT ENTITLED TO TRIALS BY JURY.

A review of United States Constitutional provisions and Supreme Court case decisions is necessary for a complete understanding of the issues involved with the DUI jury trial question. Article III, Section 2, paragraph 3 of the United States Constitution states that:

"The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; . . . "

This language was later supplemented by the Sixth Amendment which provides that:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury . . . "

On its face, the Constitution would seem to impose the right of trial by jury in all federal criminal cases, bearing in mind that Article III deals only with the federal government and federal crimes. Despite this language, however, the Supreme Court of the United States as the ultimate authority on the meaning of the Constitution, decided as early as 1888, in *Callan v. Wilson*, 127 U.S. 540, that the language in the Constitution must be viewed in light of the times in which it was written. Thus, this Court has consistently held that the right to a jury trial was never intended to apply to those crimes which were considered to be "petty offenses" at common law. The Court has on numerous occasions reiterated this distinction between "petty" and "serious" offenses and has extended the concept to statutory crimes. *Cheff v. Schackenberg*, 384 U.S. 373 (1966); *District of Columbia v. Clawans*, 300 U.S. 617 (1937); *Schick v. United States*, 195 U.S. 65 (1904); *Natal v. Louisiana*, 139 U.S. 621 (1891).

In the landmark case of *Duncan v. Louisiana*, 391 U.S. 145 (1968), when the Court held that, by virtue of the Fourteenth Amendment, the Sixth Amendment right to trial by jury also applied to state criminal proceedings, this Court restated its position with regard to the limitations between "serious" and "petty" offenses.

. . . It is doubtless true that there is a category of petty crimes or offenses which is not subject to the Sixth Amendment jury trial provision and should not be subject to the Fourteenth Amendment jury trial requirement here applied to the States . . . the penalty authorized for a particular crime is of major relevance in determining whether it is serious or not- . . . The penalty authorized by the law of the locality may be taken "as a gauge of its social and ethical judgment," . . . of the crime in question.

. . . So-called petty offenses were tried without juries both in England and in the Colonies and have always been exempt from the otherwise comprehensive language of the Sixth Amendment's jury trial provisions. There is no substantial evidence that the Framers intended to depart from this established commonlaw practice, and the possible consequences to defendants from convictions for petty offenses have been thought insufficient to outweigh the benefits to efficient law enforcement and simplified judicial administration resulting from the availability of speedy and inexpensive nonjury adjudications . . . in the absence of an explicit constitutional provision, the definitional task necessarily falls on the courts, which must either pass on the validity of the legislative attempts to exempt from jury trial, or where the legislature has not addressed itself to the problem, themselves face the questions in the first instance . . .

In determining whether the length of the authorized prison term or the seriousness of other punishment is enough in itself to require a jury trial, we are counseled by *District of Columbia v. Clawans, supra*, to refer to objective criteria, chiefly the existing laws and practices in the Nation. 391 U.S. at 159-161.

The *Duncan* Court then went on to note that both at common law and in federal statutes, the dividing line between "petty" and "serious" offenses was a maximum jail sentence of six months. The Court also indicated, in

footnote 35, that with the exception of criminal contempt offenses, the relevant penalty to be considered was the possible ma imum sentence which could be imposed, not the actual sentence levied against the defendant.

Subsequent to *Duncan*, the Court has written several decisions which clarify the manner in which a crime is to be classified as "petty" or "serious" and stress that the amount of jail time which could be imposed is to be considered the almost exclusive factor in making such a determination. The first of these cases is *Frank v. United States*, 395 U.S. 147 (1969). *Frank* dealt with a criminal contempt charge arising out of the violation of an administrative ruling. The Court analyzed the test for deciding whether or not a jury trial is warranted.

> In determining whether a particular offense can be classified as 'petty', this Court has sought objective indications of the seriousness with which society regards the offense. *District of Columbia v. Clawans, supra*, at 628, 57 S.Ct. at 663. The most relevant indication of the seriousness of an offense is the severity of the penalty authorized for its commission . . .
>
> In ordinary criminal prosecutions, the severity of the penalty authorized, not the penalty actually imposed, is the relevant criterion. In such cases, the legislature has included within the definition of the crime itself a judgment about the seriousness of the offense. See *Duncan v. Louisiana, supra*, at 162, 88 S.Ct. at 1454, n.35. *Frank*, at 395 U.S. 148-149.

Frank also held that collateral consequences of a conviction, if contemplated within the definition of "petty" by the legislature, would not remove an offense from the "petty" category. Thus the Court in *Frank* rejected the claim that a three year sentence of probation made an otherwise "petty" offense a "serious" one for purpose of

a jury trial and noted that: "Probation is, of course, a significant infringement of personal freedom, but it is certainly less onerous a restraint than jail itself." *Frank, supra*, at 151.

The next major federal case dealing with jury trials is *Baldwin v. New York*, 399 U.S. 66 (1970). In *Baldwin*, the defendant was charged with a crime which was punishable by up to one year imprisonment and which by statute could not be tried by jury. It was in *Baldwin* that the Court established the outer limit for the dividing line between "petty" and "serious" crimes. Any offense which carried a penalty in excess of six months in jail would be "serious"; those offenses where the maximum jail term did not exceed six months would be "petty". The Court made no mention of other factors, such as the amount of the fine, except to briefly refer to the $500.00 fine limit contained in the federal definition of "petty" under 18 U.S.C. § 1. The majority of the opinion centers around the issue of imprisonment and the need for objective criteria to make a determination.

> . . . This near-uniform judgment of the Nation [that any jail time over six months removes a crime from the 'petty' offense category] furnishes us with the only objective criterion by which a line could ever be drawn–on the basis of the possible penalty alone-between offenses that are and that are not regarded as 'serious' for purposes of trial by jury.
>
> Of necessity, the task of drawing a line "requires attaching different consequences to events which, when they lie near the line, actually differ very little." *Duncan v. Louisiana, supra*, at 161, 88 S. Ct., at 1453. One who is threatened with the possibility of imprisonment for six months may find little difference between the potential consequences that face

him, and the consequences that faced the appellant here. Indeed, the prospect of imprisonment for however short a time will seldom be viewed by the accused as a trivial or 'petty' matter and may well result in quite serious repercussions affecting his career and his reputation. Where the accused cannot possibly face more than six month's imprisonment, we have held that these disadvantages, onerous as they may be, may be outweighed by the benefits that result from speedy and inexpensive non-jury adjudications. *Baldwin*, at 399 U.S. 72-73.

As recently as April of 1987 this Court dismissed an appeal for want of a substantial federal question in *Bairnsfather v. Louisiana*, ___ U.S. ___, 107 S.Ct. 1620, 95 L.Ed.2d 195 (April 6, 1987), which offered the same issue for review put forth by Petitioners herein. Bairnsfather requested a jury trial when he was charged in the Louisiana courts with second offense Driving While Intoxicated (DWI), mandating a thirty day to six month jail sentence and a mandatory $300 to $500 fine. Bairnsfather presented essentially the same issues and arguments as Petitioners do in support of their contention that they are entitled to a jury trial under the Sixth Amendment. The thrust of the argument is that certain collateral consequences attendant to a DWI conviction, along with a minimum mandatory punishment, elevate a "petty" offense into a "serious" offense requiring a jury trial under the Constitution. See *Landry v. Hoepfner*, 840 F.2d 1201, 1210-1211 (5th Cir. *en banc* 1988).

Petitioners advanced no new arguments or significant authorities arising since the Court dismissed the *Bairnsfather* Appeal to convince this Court to reverse the opinion below by the Nevada Supreme Court. Moreover,

. . . by dismissing the appeal for want of a substantial federal question, the Supreme Court in *Bairnsfather* did reach and so resolve the substantive merits of the appeal, ... *Bairnsfather* is thus a ruling on the merits with precedential value, albeit with less such value than an opinion of the Court after full briefing and argument. [Citations omitted.] *Id.*, at 1212.

In *Landry, supra*, the Fifth Circuit Court of Appeals, en banc, on March 17, 1988, reversed a decision of one of its panels, *Landry v. Hoepfner*, 818 F.2d 1169 (5th Cir. 1987) and held that the United States Constitution does not require the states to provide the right of trial by jury for a first offense DWI. While noting that the maximum penalty prescribed was six months in jail and a five hundred dollar fine, the Fifth Circuit found that this " . . . does not exceed that appropriate for 'petty' offenses under *Baldwin v. New York*, ..." *Landry, supra*, at 840 F.2d 1202.

Most importantly, the Fifth Circuit declared that the United States Supreme Court . . .

> . . . has *never* held or stated any crime is a "serious" rather than a "petty" offense on the basis of any criteria other than whether its maximum authorized confinement exceeded six months or whether it was indictable at common law. Otherwise put, the Court has never identified *any particular offense* as being nonpetty which was both not indictable at common law and carried a maximum authorized confinement of not more than six months. [Emphasis original for "never"; emphasis added for phrase *"any particular offense"*]. *Id.*, at 1209.

Hence, the Petitioners' contention that certain minimum mandatory punishment, which is well under six months in jail, combined with various collateral consequences such as driver license revocation, social stigma, and

increased insurance premiums, elevate a DUI from an otherwise petty offense into a serious offense allowing a right to a jury trial is without merit. The law in this area has been settled by this Court for at least twenty years and Petitioners present no compelling argument to change the well-defined standard of when a Constitutional right to trial by jury arises. The "bright-line" test enunciated by *Baldwin* has proven to be a practical standard which is easily applied in a uniform manner throughout the United States.

II. THE BRIEF FOR PETITIONERS FAILS TO PROVIDE A CLEAR AND CONVINCING RATIONALE FOR CREATING A JURY TRIAL RIGHT UNDER THE CONSTITUTION FOR DUI OFFENSES.

Petitioners suggest that the Nation, as a whole, has passed judgment on the offense of DUI, labeling it a "serious" offense requiring the right to a jury trial. It is proffered that a need exists for national uniformity with regard to trial procedure for DUI offenders. Brief for Petitioners, pages 17-18. The Petitioners also maintain that the "nature of the offense" of DUI has become such that the crime is now "serious" in the Constitutional context of jury trial right. Brief for Petitioners, pages 18-22. Certain minimum mandatory punishment provisions under the Nevada DUI law, together with various collateral consequences, are used by Petitioners to argue that such items somehow elevate DUI out of the petty offense category and into the Constitutional realm of serious offense compelling a jury trial right.

As noted in the citation from *Landry* above, this Court has never identified any particular offense which was both not indictable at common law and carried no more than a six month term as its maximum authorized period of incarceration as a "serious" offense mandating a right to jury trial under the Constitution.

Petitioners propose by their argument that this Court ignore case precedent for this offense only and carve out a new order for drunk drivers. The justification offered for such a proposal is based on the treatment accorded to drunk drivers by society in recent times to single out DUI offenders for special enforcement and certain minimum mandatory punishment.

A. Neither the nature of DUI nor a "national standard" create a jury trial right under the Constitution.

1. The Nature of the Offense Test

Petitioners place great reliance on *District of Columbia v. Colts*, 282 U.S. 63 (1930) and on *District of Columbia v. Clawans*, 300 U.S. 617 (1937) for the application of the "nature of the offense" standard to this case in order to determine that a jury trial right arises under the Constitution. Petitioners ask the Court to rejuvenate a test utilized a half-century ago in *Colts* and since abandoned.

No weight is accorded to this test in *Duncan* or *Baldwin*, where the only jury trial standard referred to is the maximum authorized penalty, chiefly the maximum period of possible confinement. *Landry, supra*, at 1215. See also *Matos v. Rodriguez*, 440 F.Supp. 673, 676 (D. P.R. 1976) wherein the Court declared that the nature of the offense

argument found in *Colts* and *Clawans* is now inapposite. The Nevada Supreme Court, in the opinion below, adopted this criticism of *Colts* by citing *Matos* and holding that the nature of the offense test is no longer applicable. *Blanton v. North Las Vegas Municipal Court*, 748 P.2d 494, 503 (1987). In *United States v. Floyd*, 345 F.Supp. 283, 287 (W.D. Okla. 1972), *cert. denied*, 414 U.S. 1044, the Court noted that *Colts* was decided before Congress enacted the petty offense classification found in 18 U.S.C. section 1 (repealed as of October 31, 1987, with enactment of the new Federal Sentencing Guideline by the United States Sentencing Commission) which had defined a petty offense as any misdemeanor where the penalty does not exceed six months in jail and/or a $500 fine.

Further support for Respondent's position can be found in *Frank, supra*:

> In determining whether a particular offense can be classified as "petty", this Court has sought objective indications of the seriousness with which society regards the offense. . . . The most relevant indication . . . is the severity of the penalty authorized for its commission. 395 U.S. at 148.

The Court also noted in *Baldwin* that " . . . we have sought objective criteria . . . and we have found the most relevant such criteria in the severity of the maximum authorized penalty." *Baldwin, supra*, 399 U.S. at 68.

Petitioners seek to establish an exception to the rule whereby courts apply subjective criteria, such as collateral consequences of a conviction, or the "nature of the offense", to determine the seriousness of an offense on an *ad hoc* basis. The result would produce judicial opinions

driven by the personal predilictions of the jurist authoring such an opinion. In *Landry, supra*, the Fifth Circuit was mindful of this potential dilemma and instructed against utilizing any criteria other than whether the offense was indictable at common law and whether its maximum authorized penalty exceeds the bright-line test of *Baldwin*.

> These two criteria make for a brightline, objective test. To add a third criterion - the judicial perception of the "seriousness" *otherwise* of the offense, either intrinsically or as the judges conceive the "public" to generally regard it apart from the status it had at common law and its current maximum penalty - is to inject an inherently and inescapably subjective and imprecise factor into the calculus. Essentially, this would involve judges in applying the same sort of criteria that the legislative branch did in the first place when it fixed the maximum sentence. [Emphasis original]. *Landry, supra*, at 1209.

Moreover, if this Court were to back-track and revitalize the nature of the offense test, as used in *Colts* (a 1930 case concerning a Reckless Driving offense where the defendant was charged with driving at a speed greater than 22 miles per hour, recklessly), a Pandora's box of problems in applying such a standard would follow. For example, is Petit Larceny or Reckless Driving "serious", or *malum in se*, giving rise to a right to trial by jury? Language from *Colts, supra*, at 282 U.S 73, indicates that Reckless Driving is *malum in se* and therefore "serious"; would a decision from this Court in favor of Petitioners require jury trials on demand for every reckless driver? *Baldwin* and *Frank* counsel against this approach.

In *Landry*, the Fifth Circuit emphasized the point that this Court has refined the determination of when an offense is petty or serious, and therefore when a Constitutional right to a jury trial attaches: "Since Baldwin, the Court has spoken *only* in terms of the length of possible confinement as establishing the dividing line between 'petty' and serious offenses." [Emphasis original]. *Landry v. Hoepfner*, 840 F.2d at 1208. Therefore, Petitioners' reliance on certain collateral consequences, minimum mandatory punishment, and the nature of the offense, is misplaced. Their argument runs contrary to a long line of decisions by the Court that the determinative factor is the maximum authorized period of confinement. See *Landry, supra*, at 1215-1216. See also *Duncan, supra; Baldwin, supra; Frank, supra; Codispoti, supra*.

Again, in *Landry*, the Fifth Circuit declared the following with reference to dismissal by this Court of the *Bairnsfather* appeal last year for want of a substantial federal question: "Clearly there is nothing in *Bairnsfather* which is in tension with or breaks new ground respecting *Duncan, Frank, Baldwin*, or *Codispoti*." *Id.*, at 1212.

The Nevada Supreme Court decision in *Blanton, supra*, strictly follows the principles delineated in the above cases from this Court. The opinion (reprinted in full in Appendix "A" to the Petition for Writ of Certiorari) draws heavily from *Baldwin* and concludes that the federal constitution does not require it to overturn the decision in *State v. Smith*, 99 Nev. 806, 672 P.2d 631 (1983), which held that ". . . under the statutory penalties for DUI in Nevada, the United States Constitution does not guarantee the right to jury trials in misdemeanor DUI

cases." (Appendix "A" to the Petition, page 32; also found at 748 P.2d at 501).

2. The "National Standard" Test

Lower courts and Petitioners have taken *Baldwin* out of context. For example, the "national standards" language of Baldwin has been referred to by Petitioners (see Brief for Petitioners, pages 7-8, 11-13, and 17-18) and by the Ninth Circuit in some opinions as supporting grounds for the granting of jury trials in DUI cases. See *United States v. Craner*, 652 F.2d 23, 27 (9th Cir. 1981). The reasoning stated is that since the majority of states do grant a defendant a jury trial for DUI offenses, then this is a reflection by the "nation" that the offense is a serious one. However, while many states do allow for jury trials in DUI cases, they also allow jury trials in most misdemeanor cases, that is, in cases where the penalty does not exceed six months in jail. Those states which punish DUI by penalties which do not exceed the six month standard still consider the offense as "petty". These states have not redefined "petty"; instead, they have simply determined that jury trials should be granted in all crimes, petty or not, either because their state constitutions require jury trials in all criminal matters and are broader in scope than the federal constitution, or because state legislatures have enacted statutes providing for jury trials in petty offense cases. For example, see *Bronson v. Swinney*, 648 F.Supp. 1094, 1098 (D. Nev. 1986), (appeal pending, 9th Cir.) where in footnote 2 that Court cites *Craner* as counting seven states within the Ninth Circuit which grant jury trials by state constitution or by state statute and only one, Hawaii, which does so by a ruling from the Hawaii

Supreme Court. Nationally, the standard for defining "petty" offense still turns primarily on the maximum possible jail sentence and the six month rule. *Codispoti v. Pennsylvania*, 418 U.S. 506 (1974); *Taylor v. Hayes*, 418 U.S. 488 (1974).

Moreover, many states, perhaps 21 by Petitioners' count (see Brief for Petitioners, pages 12-13), provide for a maximum jail term of one year or more for DUI violations. Hence, Petitioners' rationale that DUI is a serious crime in that jury trials are provided for DUI offenders by a majority of states becomes a boot-strapped argument. The law is clear that a right to jury trial is mandated where the maximum authorized term of incarceration exceeds six months. *Baldwin, supra*. To argue that 21 states make DUI punishable by one year, and therefore it is "serious", so that if other states punish it by six months, they shall provide a jury trial, is to place the cart before the horse. In those 21 states DUI is serious by legislative definition of the crime; in Nevada and other states DUI is a petty offense, also by legislative definition of the crime.

At this point the question before the Court narrows to that of a states' rights issue. Petitioners would impose the will of what they perceive to be the majority view upon a minority of states. Most significantly, Petitioners do this under the aegis of a Constitutional mandate. Such a mandate does not exist; nor should this Court create one through the decision it renders in this case by carving out an exception based on Petitioners' viewpoint of DUI as a serious offense across the Nation. As stated in *Landry, supra*, at 1218:

> We are not persuaded that the majority state practice in this respect sets the constitutionally

> required minimum for all states . . . We observe that more recently the Court has refused to condemn a practice as unconstitutional notwithstanding that it had been rejected by forty-eight states and was followed only by two. *Martin v. Ohio*, ___ U.S. ___, 107 S.Ct. 1098, 1103 (1987).

The rulings in *Baldwin, Frank* and *Codispoti* nonetheless instruct that an offense is deemed "petty" or "serious" based on how any given legislature chooses to define the limits of the maximum authorized penalty. Therefore, it is a choice reposing with each state legislature to determine which crimes are classified in such a way that a jury trial right is allowed. As noted in *Argersinger v. Hamlin*, 407 U.S. 25, 39 (1972):

> We do not sit as an ombudsman to direct state courts how to manage their affairs but only to make clear the federal constitutional requirement. How crimes should be classified is largely a state matter.

The Constitution serves to provide a framework beyond which the state legislatures cannot go. In other words, states are free to establish whatever punishment for DUI their legislatures may see fit. If a state elects to provide greater than a maximum six month jail term, then the Constitution steps in, under the rulings of this Court, to mandate that the state provide a jury trial right. Where the state chooses to cap the jail term at six months, however, the Constitution will not speak as to whether there will be a bench trial or trial by jury.

The above analysis precisely follows traditional thought with regard to the relationship between the federal government and the States of the Union. The Constitution is there to guide and limit the states, but not, where choice is left to them, dictate that choice, much as

the parent, possessed of the wisdom of experience, guides his offspring into adulthood but does not dictate which path they must choose to follow.

Petitioners place great reliance on two federal cases within the Ninth Circuit to support their position: *United States v. Craner, supra;* and *Bronson v. Swinney, supra.* Yet, the Nevada Supreme Court was mindful of these cases and distinguished them as an " . . . unnecessary and unwarranted expansion of the Supreme Court's holding in Baldwin." *Blanton, supra,* at 748 P.2d 500 (also in Appendix "A" to the Petition, page 31). *Landry, supra,* also distinguished the *Craner* case and found no convincing body of lower federal court decisions which have developed a clear consensus contrary to the plain meaning of the Supreme Court cases. *Landry, supra,* at 1214-1215.

B. Fine amount is an insignificant factor for the jury trial issue.

Petitioners rely upon *Rife v. Godbehere,* 814 F.2d 563 (9th Cir. 1987), a prosecution for misdemeanor DUI from the Arizona state court system which held that such an offense became a serious offense allowing a jury trial right where the maximum fine had been increased from $500 to $1000, even though the maximum term of incarceration remained at six months. In *Muniz v. Hoffman,* 422 U.S. 454 (1975), this Court rejected the notion that the amount of a possible fine plays any significant factor in determining whether a jury trial right exists. The *Muniz* case concerned a fine of $10,000 imposed upon a labor union in a contempt proceeding and recognized that fines

are intrinsically different from a possible term of incarceration. While the Court did not set any outer limit on a fine for jury trial purposes, it did indicate that fines are, to some extent, at the bottom of considerations to be entertained.

> It is one thing to hold that deprivation of an individual's liberty beyond a six-month term should not be imposed without the protections of a jury trial, but it is quite another to suggest that, regardless of the circumstances, a jury is required where any fine greater than $500 is contemplated. From the standpoint of determining the seriousness of the risk and the extent of the possible deprivation faced by a contemnor, imprisonment and fines are intrinsically different. *Id.,* at 477.

The Ninth Circuit decision in *Rife* must be considered another anomaly from that Court in view of this Court's holding in *Muniz.* Compare 18 U.S.C. § 1 (repealed effective October 31, 1987) and 18 U.S.C. § 19, which define petty offense under federal prosecutions.

Considering the above analysis, it is difficult to agree with the reasoning of Petitioners. The Respondent City submits that the opinions in *Bronson, Craner,* and *Rife* represent an incomplete statement of the case law in this area and the rationale and policies set forth by this Court.

CONCLUSION

For the above and foregoing reasons, Respondent respectfully requests this Court to affirm the opinion of

the Supreme Court of Nevada. The nature of a misdemeanor DUI offense in Nevada has not changed from what is categorized as "petty" to that of "serious". The maximum authorized punishment remains at six months in jail and/or a $1,000 fine. The "bright-line" test constitutes a clear line of demarcation between petty and serious offenses and can be readily applied in courts throughout the Nation.

Respectfully submitted,

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